

1 ALSCHULER GROSSMAN LLP
Marshall B. Grossman (No. 35958)
2 William J. O'Brien (No. 99526)
Tony D. Chen (No. 176635)
3 Dominique N. Thomas (No. 231464)
The Water Garden
4 1620 26th Street
Fourth Floor, North Tower
5 Santa Monica, CA 90404-4060
Telephone: 310-907-1000
6 Facsimile: 310-907-2000
Email: mgrossman@alschuler.com
7 wobrien@alschuler.com
tchen@alschuler.com
8 dthomas@alschuler.com

9 Attorneys for Defendant and Counterclaimant,
Blockbuster Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 NETFLIX, INC., a Delaware corporation,

14 Plaintiff,

15 vs.

16 BLOCKBUSTER INC., a Delaware corporation,
17 DOES 1-50,

18 Defendants.

19 AND RELATED COUNTER ACTION.
20

CASE NO. C 06 2361 WHA (JCS)

**BLOCKBUSTER'S OPPOSITION TO
DENNIS DILBECK'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED UNDER L.R.
3-12**

Judge: Hon. William H. Alsup
Complaint Filed: April 4, 2006

1 Defendant and Counterclaimant, Blockbuster Inc., opposes Dennis Dilbeck's
 2 Administrative Motion to consider whether *Dennis Dilbeck v. Netflix, Inc.*, No. C 07-00643 PVT
 3 (N.D. Cal.) ("*Dilbeck*") is related to *Netflix, Inc. v. Blockbuster Inc.*, No. C 06 2361 WHA (N.D.
 4 Cal.) ("*Blockbuster*").

5 These two actions are not related. Under Local Rule 3-12(a), an action is related
 6 to another only when both of two requirements are met:

7 (1) The actions concern substantially the same parties, property,
 8 transaction or event; and

9 (2) It appears likely that there will be an unduly burdensome
 10 duplication of labor and expense or conflicting results if the cases
 11 are conducted before different Judges.

12 L.R. 3-12(a). Neither prong of the test for relatedness is satisfied here.

13 As the Court knows, *Blockbuster* is a patent-infringement action between
 14 competitors. By contrast, *Dilbeck* is a national consumer class-action against one of those
 15 competitors, Netflix, Inc. *Blockbuster* does include counterclaims against Netflix under the
 16 Sherman Antitrust Act, but even the antitrust aspects of the two cases involve substantially
 17 different parties and transactions. While *Blockbuster* involves only two competing corporations,
 18 *Dilbeck* involves millions of consumers: "a class of all persons and entities who subscribed to
 19 Netflix." (Dilbeck Complaint, ¶ 1; *see id.* at 76 ("Netflix claims to have over 5 million
 20 subscribers."))

21 Not only are the parties different, but so are the subject matters of the two cases.
 22 *Blockbuster* involves allegedly infringing acts by Blockbuster, Netflix's claim for damages
 23 against Blockbuster, and other matters not at issue in *Dilbeck*, while *Dilbeck* involves claims
 24 under California's Antitrust Act and California unfair competition law, issues related to class
 25 certification, consumer remedies, and other matters not at issue in *Blockbuster*. Even the federal
 26 antitrust arguments and issues raised by Blockbuster will differ from those raised by the class
 27 representatives in *Dilbeck*. This Court noted such differences in its order denying Dilbeck's
 28 motion to intervene in *Blockbuster*, saying: "[A] competitor like Blockbuster faces different

1 antitrust issues from *consumers* like Dilbeck.” (Order Denying Motion to Intervene at 4:24-25
 2 (emphasis in original).) For all these reasons, *Blockbuster* and *Dilbeck* are not sufficiently related
 3 under the first prong of Local Rule 3-12(a).

4 As a further and independently sufficient ground for opposition, the second prong
 5 of Local Rule 3-12(a)’s related-case standard is also unsatisfied. Because many of the issues
 6 raised in the actions are different, there is not likely to be any significant duplication of labor or
 7 expense between the two cases. The Court is aware of the distinct and separate inquiries the
 8 cases present even within the antitrust sphere:

9 The economics of the damages theories for consumers, for example,
 10 would add a layer of complexity over and above the issues
 11 Blockbuster must litigate. Proof of consumer damages would
 12 require a wholly different set of economic facts. Finding these facts
 13 would likely require different experts and third-party discovery
 14 requests. Another difference would likely lie in how the product
 15 market and the geographic markets are to be defined.

16 (Order Denying Motion to Intervene at 4:24-27:5:1-3.) These distinctions suggest that the efforts
 17 expended in *Blockbuster* and *Dilbeck* will largely be directed to divergent legal issues.
 18 Furthermore, *Dilbeck*’s status as a class action will result in much of the labor in *Dilbeck* being
 19 devoted to class certification issues – issues that are nonexistent in *Blockbuster*. Because the
 20 different judges will be confronted with such distinct issues in resolving the two cases, no undue
 21 burden will be imposed by leaving the existing judicial assignments in place, and there is no basis
 22 for concern that this will result in conflicting results. For these additional reasons as well,
 23 *Blockbuster* and *Dilbeck* are not related under Local Rule 3-12(a).

24 DATED: February 12, 2007 ALSCHULER GROSSMAN LLP

25
 26 By /s/
 27 Dominique N. Thomas
 28 Attorneys for Defendant and Counterclaimant,
 Blockbuster Inc.